

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

04 11853

TREMONT REALTY CAPITAL, INC.,

Plaintiff,

v.

PINNACLE GROUP, LLC, ADAMS
CANYON RANCH, LLC, JOHN LANG,
and MICHAEL GRADY,

Defendants.

MAGISTRATE JUDGE Alexander

Civil Action No. _____

RECEIPT # _____
AMOUNT \$ 150
SUMMONS ISSUED (e)
LOCAL RULE 4.1 1
WAIVER FORM _____
MCF ISSUED _____
BY DPTY. CLK. F.O.M
DATE 8/25/04

COMPLAINT

Introduction

1. This action for breach, unjust enrichment, fraud and unfair and deceptive practices arises out of an agreement by Pinnacle Group, LLC, Adams Canyon Ranch, LLC, John Lang, and Michael Grady (collectively, the "Defendants") to pay a brokerage fee to Plaintiff Tremont Realty Capital, Inc. ("Tremont") in the event that the Defendants obtained financing, from any source, for a real estate development project known as The Ranch at Santa Paula located in Ventura County, California (the "Project"). Such financing was obtained and a brokerage fee in the amount of \$830,000 is due Tremont.

Parties

2. Tremont is a Delaware corporation with its principal place of business located at 800 Boylston Street, Suite 401, Boston, Massachusetts.

3. Pinnacle Group, LLC ("Pinnacle") is an Arizona limited liability company with

its principal place of business located at 8145 North 86th Street, Scottsdale, Arizona.

4. Adams Canyon Ranch, LLC (“Adams Canyon”) is an Arizona limited liability company with its principal place of business located at 8145 North 86th Street, Scottsdale, Arizona.

5. John Lang is an individual residing in Scottsdale, Arizona. Lang is the manager of Pinnacle.

6. Michael Grady is an individual residing in Scottsdale, Arizona. Grady is the CFO of Pinnacle and the manager of Santa Paula Development Partners, LLC, which is the manager of Adams Canyon.

Jurisdiction and Venue

7. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332 because the parties are organized under the laws of and maintain their principal places of business in different states and the amount in controversy exceeds \$75,000.00, exclusive of interests and costs.

8. Venue in this District is proper under 28 U.S.C. § 1391(a) because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district.

Facts

9. On August 30, 2003, Tremont and the Defendants entered into a Mortgage Banking Agreement (the “Agreement”). A true and accurate copy of the Agreement is attached hereto as Exhibit A.

10. Prior to entering into the Agreement, the parties negotiated the terms of the Agreement over several months. Those negotiations took place primarily during telephone calls between the Defendants and representatives of Tremont located in Boston, Massachusetts.

11. According to the Agreement, the Defendants “grant[ed] Tremont the exclusive right to procure or arrange the subject financing” for a project known as The Ranch at Santa Paula located in Ventura County, California (the “Project”). See Agreement at Paragraph 1.

12. According to the Agreement, the Defendants agreed to pay Tremont “a fee equal to one percent (1%) of the maximum loan amount of any senior debt financing, 3% of any mezzanine or 5% of any equity capital that is committed on the Project.” See Agreement at Paragraph 4.

13. Tremont’s exclusive right to procure or arrange financing for the Project was subject to the exception that if the Defendants obtained financing from a source listed on Appendix 1 to the Agreement, Tremont would not earn the agreed-upon brokerage fee, but rather would earn only a breakup fee of \$25,000. See Agreement at Paragraph 5.

14. The sources listed on Appendix 1 to the Agreement are Funding America, Sion Holdings, and Old Standard Life. A true and accurate copy of Appendix 1 to the Agreement is attached hereto as Exhibit B.

15. Following execution of the Agreement, Tremont introduced the Defendants to Fidelity Management & Research Company (“Fidelity”) as a funding source for the Project.

16. In 2003 and 2004, Tremont, Fidelity and the Defendants negotiated the terms under which Fidelity would provide financing to the Project. Those negotiations took place primarily during telephone calls among the Defendants, representatives of Tremont located in Boston, Massachusetts, and representatives of Fidelity located in Boston, Massachusetts.

17. Fidelity ultimately committed to provide the Defendants with \$16,600,000 in equity financing for the Project subject to the execution of an appropriate financing agreement and related documentation.

18. In the months leading up to July, 2004, Tremont, Fidelity and the Defendants engaged in negotiations concerning the terms of a financing agreement.

19. Fidelity and the Defendants had each retained counsel to assist in negotiating and documenting the terms of a final financing agreement.

20. As of July, 2004, counsel for Fidelity and the Defendants were in the process of exchanging drafts of a financing agreement and related documentation by which Fidelity would provide the Defendants with \$16,600,000 in equity financing for the Project.

21. During the negotiations among Tremont, Fidelity and the Defendants, the Defendants represented to Tremont and Fidelity that they were not engaged in discussions with any potential financing source other than Fidelity and those lenders named on Appendix 1 to the Agreement. At the time Defendants made this representation, upon information and belief, they were engaged in discussions with potential lending source(s) other than Fidelity and those lenders named on Appendix 1 to the Agreement.

22. In July, 2004, the Defendants secured financing for the Project with another lender and ceased all negotiations with Fidelity and Tremont.

23. On July 26, 2004, Tremont made demand upon the Defendants to pay a brokerage fee equal to 5% of the \$16,600,000 in equity financing that Fidelity had committed to the Project. A true and accurate copy of the July 26, 2004 correspondence is attached hereto as Exhibit C.

24. On July 27, 2004, the Defendants rejected Tremont's demand that it be paid the agreed-upon brokerage fee. A true and accurate copy of the July 27, 2004 correspondence is attached hereto as Exhibit D.

COUNT I
(Breach of Contract)

25. Tremont hereby realleges and incorporates paragraphs 1 - 24 above.

26. The Defendants have breached the Agreement by wrongfully refusing and failing to perform their obligations under that agreement, specifically their failure to pay the brokerage fee in accordance with paragraph 4 of the Agreement.

27. Tremont has performed all conditions precedent to its right to collect the brokerage fee.

28. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT II
(Breach of the Covenant of Good Faith and Fair Dealing)

29. Tremont hereby realleges and incorporates paragraphs 1 - 28 above.

30. The Agreement contains an implied covenant of good faith and fair dealing.

31. The Defendants are in breach of the implied covenant of good faith and fair dealing contained in the Agreement.

32. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT III
(Unjust Enrichment)

33. Tremont hereby realleges and incorporates paragraphs 1 - 32 above.

34. The Defendants have been unjustly enriched by their retention of benefits received in connection with Tremont's performance of its obligations under the Agreement and their refusal to pay Tremont its brokerage fee.

35. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT IV
(Fraud)

36. Tremont hereby realleges and incorporates paragraphs 1 - 35 above.

37. The Defendants' misrepresentations that they were not in discussions with potential financing sources other than Fidelity and those lenders named on Appendix 1 to the Agreement constitute false statements of fact and were known to the Defendants to be false when made or were made with reckless disregard for their truth or falsity.

38. The Defendants intended to and did induce Tremont to reasonably rely on their representations as outlined herein to its detriment.

39. The Defendants' conduct has caused and continues to cause damage to Tremont.

COUNT IV
(Unfair and Deceptive Acts and Practices under M.G.L. c. 93A)

40. Tremont hereby realleges and incorporates paragraphs 1 - 39 above.

41. The Defendants are engaged in trade or commerce within the meaning of Mass. Gen. L. c. 93A, § 1.

42. The actions of the Defendants were calculated to obtain the benefits provided by Tremont under the Agreement without having to provide Tremont with the consideration promised under the Agreement.

43. The actions of the Defendants as alleged herein constitute unfair and deceptive acts and practices in violation of Mass. Gen. L. c. 93A, §§ 2 & 11.

44. The unfair and deceptive acts committed by the Defendants were knowing and willful.

45. The Defendants' conduct has caused and continues to cause damage to Tremont.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Tremont Realty Capital, Inc. respectfully requests that this

Court:

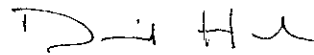
- [a] enter judgment in Tremont's favor and against the Defendants on count I of the Complaint and award damages in an amount to be determined by the trier of fact;
- [b] enter judgment in Tremont's favor and against the Defendants on count II of the Complaint and award damages in an amount to be determined by the trier of fact;
- [c] enter judgment in Tremont's favor and against the Defendants on count III of the Complaint and award damages in an amount to be determined by the trier of fact;
- [d] enter judgment in Tremont's favor and against the Defendants on count IV of the Complaint and award damages in an amount to be determined by the trier of fact;
- [e] award Tremont three times its compensatory and consequential damages for the Defendants' knowing and willful violations of G.L. c. 93A;
- [f] award Tremont its reasonable attorneys' fees and costs due to Defendants' violations of M.G.L. c. 93A; and
- [g] award Tremont such other and further relief as this Court deems just and proper.

JURY DEMAND

Tremont Realty Capital, Inc. hereby demands a trial by jury on all claims so triable.

TREMONT REALTY CAPITAL, INC.

By its attorneys,



James M. Wodarski, BBO# 627036

David Hadas, BBO #641294

Mintz, Levin, Cohn, Ferris,

Glovsky and Popeo, P.C.

One Financial Center

Boston, MA 02111

(617) 542-6000

Dated: August 25, 2004

JS 44
(Rev. 3/99)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TREMONT REALTY CAPITAL, INC.

DEFENDANTS

PINNACLE GROUP LLC, ADAMS CANYON RANCH, LLC,
JOHN LANG and MICHAEL GRADY(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Suffolk
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: LAND CONDEMNATION CASES: USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER):
JAMES M. WODARSKI
DAVID HADAS
MINITZ LEVIN COHN FERRIS GLOVSKY AND POPEO PC
ONE FINANCIAL CENTER, BOSTON, MA
617-542-6000

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|---------------------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input checked="" type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Ed. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment or Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input checked="" type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug-Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 156 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Covenants <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3415 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Easement <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor Mgmt. Relations <input type="checkbox"/> 730 Labor Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA 1395f <input type="checkbox"/> 862 Black Lung 923 <input type="checkbox"/> 863 DIWC/DIWW 1405(g) <input type="checkbox"/> 864 SSIC Title XVI <input type="checkbox"/> 865 RSI 405(g) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7639

V. ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from ☐ 5 another district (specify) _____
- ☐ 6 Multidistrict Litigation
- Appeal to District Judge from ☐ 7 Magistrate Judgment

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 U.S.C., Section 1332

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐DEMAND \$ **830,000**
plus interest
plus trebleCHECK YES only if demanded in complaint:
JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) (See instructions): IF ANY

JUDGE _____

DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

8/25/04

D. J. H. W.

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IF P _____

JUDGE _____

MAG. JUDGE _____

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY) TREMONT REALTY CAPITAL, INC.
V. PINNACLE GROUP, LLC
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LISTED ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1)).
- ___ I. 160, 410, 470, R.23, REGARDLESS OF NATURE OF SUIT.
- ___ II. 195, 368, 400, 440, 441-444, 540, 550, 555, 625, 710, 720, 730, 740, 790, 791, 820*, 830*, 840*, 850, 890, 892-894, 895, 950. *Also complete AO 120 or AO 121 for patent, trademark or copyright cases
- X III. 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891.
- ___ IV. 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900.
- ___ V. 150, 152, 153.
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E)).
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? YES ☐ NO ☒
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? (SEE 28 USC 2403) YES ☐ NO ☒
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? YES ☐ NO ☒
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? YES ☐ NO ☒
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY) - (SEE LOCAL RULE 40.1(C)). YES ☐ NO ☒
OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? - (SEE LOCAL RULE 40.1(D)). YES ☐ NO ☒
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES ☐ NO ☒
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? _____
9. IN WHICH SECTION DO ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Eastern
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION? YES ☐ NO ☒ OR WESTERN SECTION: YES ☐ NO ☒

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME David Hadas, Esquire -- Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

ADDRESS One Financial Center, Boston, MA 02111

TELEPHONE NO. (617) 348-1793

(Category rev - 3/97)